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**HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6658 OF 2005.

Rajashri Sandesh Chavan.
& another.

..Petitioners.

Versus.

Smt. Sundirabai Shrirang Chavan
and others.

..Respondents.

Shri. Arun Palekar for the Petitioners.
Shri. A. R. Kapdnis for the respondent nos. 2 to 8.
Shri. Dilip Bodke for respondent no.1.

CORAM: S.B.MHASE, J.

DATE : APRIL 5, 2006.

P.C.

1. Heard learned counsel for the petitioner
Shri. Arun Palekar. On instructions, he states that
he may be allowed to delete petitioner No.1. Leave to
delete petitioner no.1 is hereby granted.

2. Regular Civil Suit No. 165 of 2005 has
been filed by the respondent no.1 herein Smt.
Sundarabai Chavan for partition and possession of the
suit properties. In the said suit application,
Exhibits -5 & 7 were submitted seeking injunction.
Both these applications were disposed of by an order
dated 24.6.2005. Original defendant No.1 was
prohibited from making any kind of construction or any

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further construction in the suit property including
the structure of whose photographs are produced on
record vide Exhibit 18/1 & 2, more particularly
described in plaint para 1, by herself, her agents,
servants, etc., till the decision of the main suit.
It was further directed that the petitioner -
defendant no.2 shall immediately remove the shed
installed by her in the suit property more
particularly described in plaint para 1 by her, vide
Exhibit 18/2 within 15 days from the passing of this
order, failure of which plaintiff is entitled to
remove the shed by appointing Court Commissioner,
etc.,. This order was challenged by filing a
miscellaneous appeal bearing No. 104 of 2005 which
was disposed of by the learned District Judge, Satara
on 24.8.2005. The appeals were dismissed and stay to
the mandatory part of the impugned order directing the
removal of the shed was vacated.

3. Thus, during the pendency of the suit and
appeal shed in question was protected by the orders of
the Courts. Both these orders have been challenged by
the petitioner, who is defendant no.2 in the original
suit.

4. Now, the petitioner has filed a sole
statement before this Court that the petitioner may be

allowed to continue the shed till the disposal of the suit and further made it clear to this Court that the petitioner will not claim any equity in her favour to claim the said portion of the land wherein the shed is situated or in the adjoining land to allot to the share of the petitioner, simplicitor on account of shed being located at that place. She has further stated that no further improvements in the shed will

be carried out till final disposal of the suit.

5. Learned counsel for the respondent vehemently opposed for maintaining the shed in spite of such undertaking. However, this Court finds that the shed is already there, it was protected during the pendency of the appeal by the appellate Court and now the petitioner has given an undertaking and has made a statement before this Court that no benefit of equity will be claimed in the partition simplicitor relying upon the existence of the shed in the said portion of the land. It is further undertaken that no construction will be carried out in respect of the said shed and/or any other portion of that land. Therefore, this Court finds that it will be proper to modify that part of the impugned order since the statements are being accepted. Therefore, the directions given to the petitioner - original defendant no.2 to remove the shed as more specifically

described in plaint, paragraph no.5 by the plaintiff vide photograph Exhibit 18/2 is hereby quashed and set aside.

6. In short, the direction given by the Civil Judge, Junior Division, Wai in its order dated 24.6.2005, vide operative part order clause (5) is hereby struck down. However, rest of the directions will continue as against the present petitioner - defendant. Needless to say that, rest of the order is not challenged by other defendants. Therefore, other part of the order will remain as it is.

7. Learned counsel for the respondent makes a request that the suit may be expedited. Learned counsel for the petitioner has no objection for issuing directions to that effect. Since suit is for partition and possession, the trial Court is directed to hear and dispose of the suit as expeditiously as possible. Parties are directed to co-operate with the court below.

8. With these directions, petition is disposed of.

(S.B.MHASE, J.)